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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

Docket No. 190325272-9470-01

RIN 0648-XG925

**Pacific Island Pelagic Fisheries; 2019 U.S. Territorial
Longline Bigeye Tuna Catch Limits**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes a 2019 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). NMFS would allow each territory to allocate up to 1,000 t each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. The proposed catch limits and accountability measures would support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0028, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0028>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments

(enter "N/A" in the required fields if you wish to remain anonymous) .

FOR FURTHER INFORMATION CONTACT: Rebecca Walker, NMFS PIRO Sustainable Fisheries, 808-725-5184.

SUPPLEMENTARY INFORMATION: NMFS proposes to specify a 2019 catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,000 t of its 2,000 t bigeye tuna limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Western Pacific Fishery Management Council recommended these specifications. The proposed catch and allocation limits and accountability measures are identical to those NMFS specified for U.S. territories in each year since 2014 (for the most recent example, see 83 FR 53399, October 23, 2018).

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will

follow the procedures in 50 CFR 665.819. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

NMFS will consider public comments on the proposed action and draft environmental assessment, and will announce the final specifications in the **Federal Register**. On March 20, 2017, in *Territory of American Samoa v. NMFS, et al.* (16-cv-95, D. Haw), a federal judge set aside a NMFS rule that amended the American Samoa Large Vessel Prohibited Area (LVPA) for eligible longliners on the grounds that NMFS did not consider under the Deeds of Cession the protection of cultural fishing in American Samoa. NMFS has appealed this decision, which is pending before the Ninth Circuit Court of Appeals. NMFS also invites public comments that address the impact of this proposed rule on cultural fishing in American Samoa.

NMFS must receive any comments on this rule by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by

that date. Regardless of the final specifications, all other existing management measures will continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would specify a 2019 limit of 2,000 (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the CNMI). NMFS would also allow each territory to allocate up to 1,000 t of its 2,000 t limit to U.S. longline fishing vessels in a specified fishing agreement that meets

established criteria set forth in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). Payments under the specified fishing agreements support fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would directly apply to longline vessels federally permitted under the FEP, specifically Hawaii, American Samoa, and Western Pacific longline permit holders. As of March 2019, 144 vessels had Hawaii permits and 46 had American Samoa permits. There are no active Western Pacific general longline permitted vessels.

Based on dealer data collected by the State of Hawaii, Hawaii longline vessels landed approximately 32.75 million pounds of pelagic fish valued at \$101.6 million in 2017. With 145 vessels making either a deep- or shallow-set trip in 2017, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged almost \$701,000 per vessel. In 2017, American Samoa-based longline vessels

landed approximately 4.8 million pounds of pelagic fish valued at \$4.7 million, where albacore made up the largest proportion of pelagic longline commercial landings at 3.04 million pounds. With 15 active longline vessels in 2017, the ex-vessel value of pelagic fish caught by American Samoa fishery averaged about \$313,333 per vessel.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels permitted federally under the FEP are small entities, i.e., they are engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

The proposed action would potentially benefit the Hawaii longline fishermen by allowing them to fish under specified fishing agreements with a territory, which could extend fishing effort for bigeye tuna in the western Pacific and provide more bigeye tuna for markets in Hawaii and elsewhere.

In accordance with Federal regulations at 50 CFR Part 300, Subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S. bigeye tuna limit. Therefore, these vessels may retain bigeye tuna and land fish in Hawaii after the date NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the U.S. exclusive economic zone around Hawaii. In 2018, all dual American Samoa/Hawaii longline permitted vessels were included in the fishing agreement with the CNMI and American Samoa. Therefore, NMFS attributed bigeye catches by those vessels to the two territories.

The 2019 U.S. bigeye tuna catch limit is 3,554 t, which is the same limit in place for 2018. NMFS established this limit through a separate action (83 FR 33851, July 18, 2018). Based on preliminary logbook data, NMFS expects the fishery to reach this limit by October 20, 2019.

Through this action, Hawaii-based longline vessels could potentially enter into one or more fishing agreements with participating territories. This would enhance the ability of these vessels to extend fishing effort in the western and central Pacific Ocean after reaching the 2019 U.S. limit and provide more bigeye tuna for markets in Hawaii. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is high will result in positive economic benefits for fishery participants and net benefits to the nation. Allowing participating territories to enter into specified fishing agreements under this action is consistent with Western and Central Pacific Fishery Commission's (WCPFC) conservation and management objectives for bigeye tuna in Conservation and Management Measure 2018-01, and benefits the territories by providing funds for territorial fisheries development projects. Establishing a 2,000 t longline limit for bigeye tuna where territories are not subject to Western and Central Pacific Fisheries Commission longline limits is not expected to adversely affect vessels based in the territories.

Historical catch of bigeye tuna by the American Samoa longline fleet has been less than 2,000 t, even including the catch of vessels based in American Samoa, catch by dual

permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified fishing agreements. With regard to Guam and the CNMI, no longline fishing has occurred since 2011.

Under the proposed action, longline fisheries managed under the FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (i.e., area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed rule based on gear type, or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 2019.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.